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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 173

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

HOWE A. STIDGER, ET UX.

REPLY BRIEF

In his brief the amicus argues that the Commissioner's interpretation of § 162(a)(2) has not always been consistent. Specifically, he suggests that Rev. Rul. 55–571, 1955–2 Cum. Bull. 44, which permits a naval officer to deduct as travelling expense the costs of meals aboard ship when it is away from its home port, is inconsistent with the longstanding administrative interpretation of home as a taxpayer's principal place of employment.

However, in treating the naval officer's home port as his principal place of business, Rev. Rul. 55–571 is entirely consistent with this interpretation of home in § 162(a)(2). The ruling is based upon the premise that a naval officer is in a position similar to the engineer of a train, a bus driver, or an air-

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plane pilot. Since the principal place of business for such taxpayers is their home terminal, and they are permitted travelling expense deductions when away on business trips, the revenue ruling permits a similar deduction when a naval officer is on a ship away from its home port or terminal. While, viewed in this light, the ruling on naval officers is thus consistent with the Commissioner's long-standing interpretation of the statute, the Commissioner now recognizes that it may be unrealistic to regard all naval officers assigned to permanent shipboard duty as analogous to engineers of trains, bus drivers or airline pilots and, as indicated in the attached letter, he "will reconsider the factual correctness of the underlying premise of that portion of Rev. Rul. 55-571 [relating to naval officers]."

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1967.

U.S. TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C. 20224, January 9, 1967.

In re *Stidger, et ux., Howe A.*

Honorable MITCHELL ROGOVIN,
Assistant Attorney General, Tax Division,
Department of Justice, Washington, D.C. 20530

DEAR MR. ROGOVIN: In response to your inquiry, this is to advise you that we are prepared to reconsider that portion of Rev. Rul. 55–571, C.B. 1955–2, 44, which holds, in effect, that a naval officer on permanent duty afloat has his "home" for traveling expense purposes at the home port of his ship, rather than aboard the moving vessel. Our reconsideration is based upon the recognition that the factual situations involving naval officers assigned to permanent duty afloat may vary widely.

The portion of Rev. Rul. 55–571 here in question was based upon the premise that the home port of the ship of a naval officer on permanent duty afloat is comparable to the home terminals or ports of train and airplane crews, of longline bus and truck drivers, and of commercial fishermen, which are the "home" of such taxpayers for traveling expense purposes. Rev. Rul. 54–497, C.B. 1954–2, 75, 77; Rev. Rul. 55–236, C.B. 1955–1, 274; Rev. Rul. 55–235, C.B. 1955–1, 274. In the light of our recent discussions, however, we recognize that it may be unrealistic to

regard this premise as being universally appropriate as to all naval officers assigned to permanent duty afloat. Therefore, we will reconsider the factual correctness of the underlying premise of that portion of Rev. Rul. 55–571.

Very truly yours,

(Signed) Lester R. Uretz,
(Typed) LESTER R. URETZ,
Chief Counsel, Internal Revenue Service.

U.S. GOVERNMENT PRINTING OFFICE: 1967

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